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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANTHONY MAGNONE and
RANDAL KINNUNEN,
Individually and on Behalf of All
Others Similarly Situated,

Plaintiffs,

v.

ACCRETIVE LLC; AGORA FUND
I GP, LLC; AXIANT, LLC; MANN
BRACKEN, LLP; NATIONAL
ARBITRATION FORUM, INC.;
NATIONAL ARBITRATION
FORUM, LLC; DISPUTE
MANAGEMENT SERVICES, LLC
d/b/a FORTTHRIGHT SOLUTIONS;
DOES 1-10, inclusive;

Defendants.

CASE NO. 09-6375 (CWx)

**CLASS ACTION COMPLAINT
FOR:**

- (1) VIOLATION OF CONSUMER
LEGAL REMEDIES ACT;
- (2) BREACH OF CONTRACT;
- (3) VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT;
- (4) VIOLATION OF ROSENTHAL
FAIR DEBT COLLECTION
PRACTICES ACT;
- (5) VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE
§ 17500 *et seq.*;
- (6) VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE
§ 17200 *et seq.*

DEMAND FOR JURY TRIAL

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1 Plaintiffs Anthony Magnone and Randal Kinnunen, on behalf of themselves
2 and all others similarly situated, allege the following against Accretive LLC, Agora
3 Fund I GP, LLC, Axiant, LLC, Mann Bracken, LLP, National Arbitration Forum,
4 Inc., National Arbitration Forum, LLC, and Forthright Solutions (collectively
5 “Defendants”), upon personal knowledge as to their own actions and status, and
6 upon information and belief as to all other matters.¹

7 **INTRODUCTION**

8 1. Most consumer credit card agreements contain mandatory arbitration
9 clauses, which require consumers to forfeit their rights to litigate their disputes in
10 court and mandate that any disputes be resolved through an alternative system of
11 binding arbitration. Many of these agreements require disputes to be resolved
12 exclusively through Defendant National Arbitration Forum (“NAF”).² For years,
13 NAF falsely held itself out as an independent provider of neutral arbitration
14 services in consumer debt matters, unaffiliated with any persons or entities within
15 or outside the collections industry. Now, NAF is under siege by local and state
16 prosecutors for working alongside creditors, rubber-stamping illegitimate
17 arbitration awards against consumers, deceiving the courts and the public, and
18 undermining the integrity of the arbitration system.

19 2. Defendant Mann Bracken LLP (“Mann Bracken”) claims to be a law
20 firm specializing in consumer debt collection matters, but it is a debt collector in its
21 own right. Mann Bracken initiated thousands of so-called “arbitrations” through
22 NAF. Most of these arbitrations were against consumers from whom Mann
23 Bracken attempted to collect alleged credit card debts on behalf of its corporate
24 clients, *e.g.*, major credit card companies. As a self-proclaimed “independent and

25 ¹ Mr. Kinnunen asserts claims against all Defendants. Mr. Magnone asserts claims
26 against all Defendants except Mann Bracken, LLP.

27 ² “NAF” refers collectively to defendants National Arbitration Forum, Inc. (“NAF
28 Inc.”), National Arbitration Forum, LLC (“NAF LLC”), and Dispute Management
Services, LLC, d/b/a Forthright Solutions (“Forthright”).

1 impartial arbitration provider,” NAF was supposed to provide arbitration services
2 devoid of conflicts of interest.

3 3. In reality, NAF and Mann Bracken worked in tandem for the
4 collections industry, their interests strictly aligned with credit card companies
5 against consumers by virtue of their common owner, Defendant Accretive, LLC
6 (“Accretive”). Accretive owns and controls both NAF and Mann Bracken, and
7 their related entities. NAF was thus far from an “independent and impartial
8 arbitration provider,” and instead, was a sham operation whose primary purpose
9 was to rubber-stamp arbitration awards and confer the appearance of legitimacy
10 upon Mann Bracken’s debt collection efforts. NAF concealed its conflict of
11 interest and provided bogus arbitration services instead of the legitimate dispute
12 resolution services it promised and was contractually obligated to deliver to
13 consumers.

14 4. The Attorney General of Minnesota recently exposed the concealed
15 relationship between NAF and Mann Bracken, and the financial relationship with
16 their common owner, a group of New York hedge funds known as Accretive LLC.
17 According to the Attorney General’s complaint, NAF “is financially affiliated with
18 a New York hedge fund group that owns one of the country’s major debt collection
19 enterprises,” which relationship NAF and Mann Bracken conceal from consumers.³
20 Within days, NAF was forced to announce it was getting out of the consumer
21 arbitration business.

22 5. The People of the State of California also sued NAF in a consumer
23 fraud action brought by the City Attorney for the City of San Francisco.
24 According to the City Attorney’s complaint, based on NAF’s own statistics from
25 2003 to 2007, “in each and every case where a business entity brought a claim
26 against a consumer and the matter was disposed of by hearing, the NAF arbitrator

27 ³ Comp. ¶ 2, *State v. Nat’l Arbitration Forum, Inc.*, (Minn. Dist. Ct. filed July 14,
28 2009).

1 ruled in favor of the business entity – a 100% success rate.” Comp. ¶22, State v.
2 NAF, Case No. 08-473569 (Cal. Super. Ct., filed August 22, 2008). As alleged,
3 NAF maintained its near perfect success rate for businesses by engaging in
4 improper, deceptive and corrupt acts, including by:

5 (a) establishing incentives for arbitrators to favor debt collectors
6 over consumers;

7 (b) disregarding consumers’ evidence and/or arguments;

8 (c) overlooking and violating its own Code of Procedure to benefit
9 debt collectors, and ultimately, large creditors;

10 (d) disregarding creditors lack of evidence; and

11 (e) failing to provide the bona fide arbitration services it promised
12 to consumers.

13 6. NAF and Mann Bracken worked hand-in-hand to create the illusion of
14 legitimacy and due process, with the purpose of railroading consumers into a
15 corrupt dispute resolution process and bilking consumers out of hundreds or
16 thousands of dollars, including NAF charges and Mann Bracken’s alleged legal
17 fees and costs. Despite revelation of their ruse, neither NAF, Mann Bracken, or
18 any of the other Defendants, including Accretive, has returned the money
19 consumers paid for the “arbitration” services they never received.

20 7. To commence debt collection, Mann Bracken submitted its claim to
21 NAF and then mailed a “Notice of Arbitration,” using a standardized form
22 provided by NAF. The Notice falsely claimed that (a) NAF “is an independent
23 and impartial arbitration organization, which does not give legal advice or
24 represent parties”; and (b) “Parties have a full and equal right to present relevant
25 and reliable direct and cross examination testimony, documents, exhibits, evidence
26 and arguments.” The Notice also provided that: “IF YOU DO NOT . . . FILE
27 WITH THE FORUM A WRITTEN RESPONSE, AN ARBITRATION AWARD
28 MAY BE ENTERED AGAINST YOU [AND] AN ARBITRATION AWARD

1 MAY BE ENFORCED IN COURT AS A CIVIL JUDGMENT.” (all-caps in
2 original).

3 8. The Notice of Arbitration also directed consumers to NAF’s Code of
4 Procedure (the “NAF Code”) for information on filing a response. The NAF Code
5 required, among other things, that the consumer’s response “shall include” any
6 “fees as provided in the Fee Schedule.” In addition to other fees and costs that
7 were later tacked on to bogus arbitration awards (described below), the NAF Code
8 required consumers to make a \$50.00 initial payment on the NAF “administration
9 fee,” in order to file a response to the Notice of Arbitration and avoid defaulting in
10 the arbitration proceedings. Consumers paid such consideration to NAF for
11 “independent and impartial arbitration” services, but did not receive the services
12 for which they bargained. NAF and Mann Bracken knew, at the onset of
13 arbitration, that regardless of whether consumers actively participated in the
14 arbitration proceedings or defaulted, consumers would be deprived of due process
15 and would not receive legitimate dispute resolution services, and that NAF would
16 issue an award against the consumer, in favor of Mann Bracken’s client.

17 9. After a Notice of Arbitration was mailed to a consumer, a form letter
18 on NAF’s letterhead was generated with an “Award” in favor of the debt collector
19 claimant and against the respondent consumer, and rubber-stamped by an NAF
20 arbitrator. Although the award amounts and respondent names differed, the basic
21 template remained the same, including the following rote “findings” and
22 “conclusions,” among others: (a) “The Arbitrator has reviewed all evidence
23 submitted in this case;” (b) “The Arbitrator knows of no conflict of interests that
24 exist;” (c) “The evidence submitted supports the issuance of this Award;” and (d)
25 “The applicable substantive law supports the issuance of the Award.”

26 10. The “Award in favor of the Claimant” was invariably for hundreds or
27 thousands more than the debt owed. Plaintiffs believe the sizeable gap between the
28 amount of the alleged underlying debt and the amount awarded can be traced to the

1 improper inclusion of Mann Bracken's legal fees and NAF-related costs. In the
2 end, consumers paid illegitimate fees and costs, including a \$50.00 initial payment
3 on the NAF administration fee and exorbitant legal fees and costs -- for services
4 never rendered and for the futile exercise of having their debt disputes "decided"
5 by the very party opposing them.

6 11. Defendants' conduct is particularly egregious because it compromises
7 the legitimacy of our judicial system. Courts depend heavily upon the perceived
8 integrity and efficiency of private arbitration. Indeed, California and other states
9 fostered the growth of the arbitration industry by streamlining the process of
10 converting arbitration awards into judgments, as evidenced in Defendants' Notice
11 of Arbitration: "AN ARBITRATION AWARD MAY BE ENFORCED IN
12 COURT AS A CIVIL JUDGMENT." Defendants exploited this public interest
13 opportunity by perverting private arbitration into an unregulated trough for
14 themselves and the collections industry. Creditors who took their business to
15 Mann Bracken and NAF did not have to worry about losing, which is exactly how
16 Defendants appealed to large creditors and dominated the consumer debt
17 arbitration market for years. Indeed, while holding itself out to the public as
18 independent and neutral, "[b]ehind closed doors, NAF [sold] itself to lenders as an
19 effective tool for collecting debts."⁴ BusinessWeek recently uncovered shocking
20 examples of NAF's marketing to debt collectors, including a late 2007
21 "confidential" Powerpoint presentation aimed at creditors that promised, among
22 other things, "marked increase in recovery rates over existing collection methods."⁵
23 The process of legitimizing alternative dispute resolution as an industry can only
24 begin by requiring Defendants to disgorge their ill-gotten gains.

25
26 ⁴ Robert Berner & Brian Grow, *Banks vs. Consumers (Guess Who Wins)*,
27 BusinessWeek, June 5, 2008.

28 ⁵ *Id.*

1 12. Plaintiffs bring this lawsuit against Defendants on behalf of
2 themselves and all other similarly situated consumers, alleging claims for breach of
3 contract and violations of the Consumer Legal Remedies Act ("CLRA"),
4 California Civil Code § 1750, *et seq.*; the Fair Debt Collection Practices Act
5 ("FDCPA"), 15 U.S.C §1692, *et seq.*; the Rosenthal Fair Debt Collection Practices
6 Act ("RFDCPA"), California Civil Code § 1788, *et seq.*; and California Business
7 and Professions Code § 17200, *et seq.* and § 17500, *et seq.* for false advertising and
8 unfair competition.

9 13. Plaintiffs are not aware of the true names and capacities of defendants
10 sued as DOES 1 through 20, and therefore sue these defendants by such fictitious
11 names. Each fictitiously named defendant is responsible in some manner for the
12 occurrences alleged in this Complaint. Plaintiffs will amend this Complaint to add
13 the true names of the fictitiously named defendants once they are discovered.

14 14. Each defendant knew or realized that the other defendants were
15 engaging in or planned to engage in the violations of law alleged in this Complaint.
16 Knowing or realizing that other defendants were engaging in such unlawful
17 conduct, each defendant facilitated the commission of those unlawful acts. Each
18 defendant intended to and did encourage, facilitate, or assist in the commission of
19 the unlawful acts, and thereby aided and abetted the other defendants in the
20 unlawful conduct.

21 15. Although each defendant purports to be a separate entity, in fact,
22 Accretive is the alter ego of other defendants, as detailed below in the section,
23 "Accretive Owns and Controls the Other Defendants." At all relevant times, there
24 existed a unity of interest and ownership between Accretive and the other
25 defendants, such that any individuality and separateness between them ceased, and
26 Accretive exerted control over each of the other defendants. Accretive directly
27 owns and controls defendant Axiant, LLC, and indirectly owns and controls
28 defendants Agora Fund I GP, LLC ("Agora"), NAF Inc., NAF LLC, Forthright,

1 and Mann Bracken. Adherence to the fiction of the separate existence of these
2 defendants as entities distinct from Accretive will permit an abuse of the corporate
3 privilege, condone deception and promote injustice.

4 16. Whenever reference is made in this Complaint to any act of
5 defendants, such allegation shall mean that each defendant acted individually and
6 jointly with the other defendants named in that cause of action.

7 17. Plaintiffs seek injunctive relief, actual, statutory and punitive
8 damages, restitution, disgorgement of profits, and costs of suit, including
9 attorneys' fees, as appropriate.

10 **JURISDICTION AND VENUE**

11 18. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
12 §§ 1331 and 1640(e), and pursuant to 28 U.S.C. 1332(d), since there are at least
13 100 class members in the proposed class, the combined claims of proposed class
14 members exceed \$5,000,000, exclusive of interest and costs, and numerous class
15 members are citizens of states other than Defendants' states of citizenship

16 19. This Court has personal jurisdiction over Defendants because
17 Defendants conduct substantial business in this District, have sufficient minimum
18 contacts with this state, and otherwise purposely avail themselves of the markets in
19 this state through the promotion, sale, and marketing of their services in this state,
20 to render the exercise of jurisdiction by this Court permissible under traditional
21 notions of fair play and substantial justice.

22 20. Venue is proper pursuant to 28 U.S.C. 1391(a) because one of the
23 Plaintiffs resides here, Defendants do business in this District and receive
24 substantial fees from customers in this District, and a substantial part of the events
25 or omissions giving rise to the claims occurred in this District.

26 **PARTIES**

27 21. Plaintiff Anthony Magnone is a resident of Tarzana, California, in the
28 County of Los Angeles. In 2008, Mann Bracken filed three arbitration claims

1 against him, and in each instance, NAF issued an award against Mr. Magnone in
2 favor of Mann Bracken's client, non-party FIA Card Services ("Bank of
3 America"). NAF never provided arbitration services or engaged in any decision
4 making process before issuing the awards. Mr. Magnone's claims are asserted
5 against all Defendants except Mann Bracken.

6 22. Plaintiff Randal Kinnunen is a permanent resident of the state of
7 Washington.⁶ Around December 3, 2008, Mann Bracken filed an arbitration claim
8 against Mr. Kinnunen, and NAF issued an award against Mr. Kinnunen in favor of
9 non-party Chase Bank "care of" Mann Bracken. NAF never provided arbitration
10 services or engaged in any decision making process before issuing the award.

11 23. Defendant National Arbitration Forum, Inc. ("NAF Inc.") is a
12 Minnesota limited liability company with its registered address and principal place
13 of operations at 6465 Wayzata Blvd., St. Louis Park, Minnesota 55426. It does
14 business as "National Arbitration Forum" and "Forum."

15 24. Defendant National Arbitration Forum, LLC ("NAF LLC") is a
16 Delaware limited liability company with its registered address and principal place
17 of operations at 6465 Wayzata Blvd., St. Louis Park, Minnesota 55426. It also
18 does business as "National Arbitration Forum." NAF LLC is wholly owned by
19 NAF Inc.

20 25. Defendant Dispute Management Services, LLC, d/b/a Forthright
21 Solutions ("Forthright") is a Delaware limited liability company with its registered
22 address and principal place of operations at 6465 Wayzata Blvd., St. Louis Park,
23 Minnesota 55426. Forthright is 58% owned by NAF Inc. and 40% owned by the
24 Agora Funds, which, in turn, are owned by Accretive LLC. Forthright and NAF
25 LLC have a "services agreement" with one another, as described below.

26
27 ⁶ At the time of the wrongdoing perpetrated on him, Mr. Kinnunen was a resident
28 of South Carolina.

1 26. Collectively, Defendants NAF Inc., NAF LLC, and Forthright are
2 referred as “NAF” throughout this Complaint. As detailed below, NAF was
3 organized and operated as one entity until it split itself into three entities to obscure
4 its relationship with the other Defendants named in this Complaint.

5 27. Defendant Accretive LLC (“Accretive”) is a Delaware limited liability
6 company with its headquarters at 51 Madison Avenue, 31st Floor, New York, NY
7 10010, and its registered address at 55 East 59th Street, 22nd floor, New York, NY
8 10022. Accretive consists of a family of private equity funds under the control of
9 investment manager J. Michael Cline (“Cline”). Throughout the Class Period,
10 Accretive owned and controlled the other Defendants and aided and abetted their
11 wrongful conduct.

12 28. Defendant Agora Fund I GP, LLC (“Agora”) is a Delaware limited
13 liability company with its headquarters at 55 East 59th Street, 22nd floor, New
14 York, NY 10022. Agora is the managing partner of Agora Fund I, LP, a Delaware
15 limited partnership, Agora Fund I Coinvestment Partners, LP, a Delaware limited
16 partnership, and Agora Fund I Holding Partners, a Delaware general partnership
17 (collectively, the “Agora Funds”), which hold a 40% interest in defendant
18 Forthright. Agora is under the control of Accretive’s Cline.

19 29. Defendant Axiant, LLC (“Axiant”) is a debt collector, headquartered
20 in Huntersville, North Carolina, which bills itself as a “leading national provider of
21 financial services and recovery management solutions for issuers and investors in
22 debt products.” It is approximately 68% owned by non-party MB Acquisition
23 Solutions Corp., which in turn is 100% owned by Accretive. The other 32% of
24 Axiant is owned by the principals of what is now Mann Bracken.

25 30. Defendant Mann Bracken, LLP (“Mann Bracken”) is a debt collector,
26 organized as a Delaware limited liability partnership, with principal offices in
27 Rockville, Maryland. It is the successor firm that resulted from the merger of three
28

1 large debt-collection law firms: California-based Eskanos & Adler, Georgia-based
2 Mann Bracken, and Maryland-based Wolpoff & Abramson.

3 31. Both Mann Bracken's and Axiant's websites refer to a "strategic
4 alliance" between the two entities. For example, Axiant states that it provides "call
5 center collections facilitated through our strategic alliance with Mann Bracken,
6 LLP" and that it provides both "national arbitration services" and "litigation
7 services" "through Mann Bracken, LLP."

8 GENERAL ALLEGATIONS

9 32. Arbitration is a form of alternative dispute resolution that can offer
10 substantial benefits in judicial access and efficiency. However, arbitration also
11 exacts a price by requiring consumers to give up their rights to litigate the dispute
12 or appeal the arbitration awards. Arbitration awards are binding on the parties and
13 cannot be reviewed except in narrow circumstances.

14 33. Only a handful of arbitration service providers exist. NAF dominated
15 consumer arbitrations in the credit card debt collections industry. Recent public
16 enforcement actions challenge NAF's misrepresentations to the public that it is an
17 independent and neutral arbiter. These lawsuits allege NAF's claims are
18 contradicted by NAF's own reported statistics which reflect astounding success
19 rates for businesses over consumers.

20 34. NAF's guaranteed success rate for businesses is hardly surprising
21 given that NAF is owned by the same hedge fund group (Accretive) that owns debt
22 collection agencies, Axiant and Mann Bracken, which arbitrated against consumers
23 before NAF. As reported, NAF, Axiant, and Mann Bracken are under the common
24 control and ownership of Accretive, which financially benefits from arbitration
25 awards obtained by Axiant and Mann Bracken, and fees collected by NAF. Thus,
26 the same control group that owns and controls debt collectors Axiant and Mann
27 Bracken also owns and controls the purportedly independent NAF.

1 35. Defendants hid their financial affiliation for years until the Minnesota
2 Attorney General's recent lawsuit revealed Defendants' true ownership structure,
3 as summarized below.

4 **Accretive Owns and Controls Defendants**

5 36. Around June 2006, Accretive met with officers of NAF, which was
6 then a single entity (the Forum), to discuss the possibility of Accretive acquiring a
7 stake in the Forum. Accretive told NAF that it was "very impressed" with the
8 Forum's arbitration business and wanted to assist the company with cash and
9 future business. In return, Accretive sought a 40% stake in the Forum.

10 37. Around the same time, three large debt-collection law firms merged to
11 form Mann Bracken, which in turn sold its assets and collections operations to
12 Axiant -- a company created and owned by Accretive. The executives of the
13 Forum were aware of this merger and sale.

14 38. As talks between Accretive and the Forum advanced, the two sides
15 realized that any public acknowledgement of the relationship between the Forum,
16 Accretive, and Axiant/Mann Bracken would destroy the Forum's credibility, and
17 hence its ability to attract business and collect lucrative fees.

18 39. To avoid transparency, the two sides entered into multiple transactions
19 which, among other things, involved the Forum splitting into three parts -- NAF
20 Inc., NAF LLC, and Forthright. Thus, although NAF Inc., NAF LLC, and
21 Forthright purport to be three separate companies, in fact, they are one and the
22 same organization. They have key officers and directors in common, and their
23 addresses and office spaces are identical.

24 40. In order to ensure Accretive received the 40% stake it bargained for,
25 Accretive demanded that Forthright -- the only NAF company in which Accretive
26 had a stake -- enter into a Services Agreement with NAF LLC. Around the same
27 time, Accretive created several funds, called the Agora funds, which were
28

1 registered to the same address as, and controlled by the same person that controlled
2 Accretive. The Agora funds then purchased approximately 40% of Forthright.

3 41. As reported, the Services Agreement provided that Forthright would
4 receive the bulk of the "arbitration services" revenue after costs, and would control
5 much of the administrative aspects of arbitration. In return, Forthright received
6 from NAF LLC a seven figure monthly fee plus a bonus fee calculated based on
7 NAF LLC's revenue.

8 42. Through its ownership in Forthright and the Services Agreement
9 between NAF LLC and Forthright (imposed by Accretive), Accretive achieved
10 exactly what it sought -- a 40% stake in the National Arbitration Forum, and
11 equally important, significant ownership and control over *both* the major
12 arbitration arm (NAF) and the major debt collection arm (Mann Bracken) of the
13 consumer debt collections industry.

14 43. As reported, while negotiating these transactions, Accretive explained
15 to NAF that "[o]ur investors have entrusted us with their funds on an assumption
16 that we maintain a high level of governance oversight over our portfolio
17 companies." Accretive accomplished as much with NAF, exercising control over
18 NAF in at least the following ways:

19 (a) Accretive directed NAF LLC and Forthright to enter into the
20 Services Agreement to ensure itself a 40% stake in NAF;

21 (b) Accretive created, invested in and shared employees and offices
22 with each of the Agora Funds, which in turn invested in and controlled NAF;

23 (c) Accretive provided, through its principals, resumes to NAF for
24 NAF to consider in filling key positions, including the chief financial officer and
25 chief operating officer;

26 (d) Accretive continually sought to enlarge NAF's business by
27 introducing new customers to NAF, helping NAF bid for new contracts, and
28 seeking out new areas for NAF expansion;

1 (e) Accretive helped NAF devise public relations campaigns,
2 including opposition to proposed federal legislation designed to weaken mandatory
3 arbitration clauses; and

4 (f) Accretive required Forthright to submit detailed reports on its
5 operations to Accretive.

6 44. Similarly, Accretive exercised control over Axiant and Mann
7 Bracken, by among other things, owning 68.7% of Axiant, employing members of
8 Axiant's Board of Directors, and requiring Mann Bracken to submit detailed
9 reports on its operations (just as it required of Forthright).

10 **Defendants' Scheme Deceived Consumers and the Courts**

11 45. Many consumer credit contracts contain provisions mandating
12 arbitration for disputes between the creditor and the consumer. NAF, as a major
13 beneficiary of these mandatory arbitration provisions, sought to quell consumers'
14 (well founded) fears by offering false assurances of integrity and impartiality,
15 including the following posted on its website during the relevant time period:

16 We are guided by experience, integrity and innovation.

17 Our commitment to professional and legal standards
18 produces clear, unbiased rules, and we accord disputing
19 parties rights and privileges consistent with those of the
20 judicial system. The former judges and experienced
21 attorneys who hear and decide our cases review the facts
22 and render decisions based on known rules and
23 substantive law.

24 46. To commence debt collection, Mann Bracken submitted a claim to
25 NAF and mailed a "Notice of Arbitration," provided by NAF, to the consumer.
26 The Notice falsely claimed that:
27
28

1 (a) NAF “is an independent and impartial arbitration organization”;
2 and

3 (b) “Parties have a full and equal right to present relevant and
4 reliable direct and cross examination testimony, documents, exhibits, evidence and
5 arguments.”

6 47. The Notice of Arbitration directed consumers to the NAF Code,
7 which also reinforced the misrepresentations, including the following:

8 (a) “[NAF] arbitrators are neutral, independent, experienced and
9 knowledgeable about the applicable law”;

10 (b) “A neutral Arbitrator shall not serve if circumstances exist that
11 create a conflict of interest or cause the Arbitrator to be unfair or biased”;

12 (c) “This code shall be interpreted to provide all Parties with a fair
13 and impartial arbitration and with reasonable access to civil justice”; and

14 (d) “Awards shall be based upon a preponderance of the evidence
15 presented, unless an agreement of the Parties or the applicable law provides
16 otherwise.”

17 48. NAF’s website also contained numerous misrepresentations, including
18 the following:

19 (a) NAF “accord[s] disputing parties rights and privileges
20 consistent with those of the judicial system”;

21 (b) “Disputes are brought before a neutral third party (the
22 arbitrator) who, after carefully reviewing all of the relevant information, issues a
23 final decision in favor of one of the parties”;

24 (c) NAF “is independent and neutral. It is not affiliated with any
25 party”;

26 (d) NAF “is an independent administrator of alternative dispute
27 resolution services. Cases are heard and decided by unbiased legal experts”;
28

1 (e) NAF's "dispute resolution processes are designed to provide
2 both parties with an equal opportunity to prevail"; and

3 (f) "The Code of Procedure ensures all parties a fair, unbiased
4 dispute resolution process."

5 49. NAF's alleged "Bill of Rights" contained similar misrepresentations,
6 including the following:

7 (a) NAF provides a "justice system where claims are promptly
8 resolved under the law by neutral legal experts at a cost commensurate with the
9 matters in dispute";

10 (b) NAF's "Participatory Hearing provides parties with virtually the
11 same procedures available in court trials before a judge: written claims and
12 responses, reasonable discovery, useful motions, direct and cross examinations of
13 witnesses, introduction of relevant and reliable exhibits, opening and closing
14 statements, a prompt and detailed award"; and

15 (c) "The [NAF] Code of Procedure provides all parties with equal
16 access to discovery and allows generally for the same discovery methods that are
17 available in federal court."

18 50. The boilerplate awards rubber-stamped by NAF arbitrators, binding
19 on consumers and relied upon by the courts, provided the following illusory
20 "findings" and "conclusions," among others:

21 (a) "The Arbitrator has reviewed all evidence submitted in this
22 case;"

23 (b) "The Arbitrator knows of no conflict of interests that exist;"

24 (c) "The evidence submitted supports the issuance of this Award;"

25 and

26 (d) "The applicable substantive law supports the issuance of the
27 Award."

28

1 51. Defendants knew or should have known these statements to be false
2 and misleading, and thus the statements constitute a deception on the courts and
3 consumers.

4 52. The results of NAF's arbitrations stand in stark contrast to
5 Defendants' misrepresentations. According to the San Francisco City Attorney's
6 complaint filed on August 22, 2008, in California alone, from January 1, 2003 to
7 March 31, 2007, NAF handled over 33,948 consumer collections matters, of which
8 18,075 were disposed of by hearing before an arbitrator. In *all* cases where a
9 business brought a claim against a consumer and the matter was disposed of by
10 hearing, the NAF arbitrator ruled in favor of the business 100% of the time,
11 assisted by the high rate of consumer defaults in these hearings. Indeed, only 30 of
12 18,075 cases resulted in a consumer victory and *all* of these involved the rare case
13 where a consumer brought a claim against a business.

14 53. The San Francisco City Attorney's allegations regarding NAF's track
15 record are consistent with the allegations of a former NAF employee, who herself
16 sought to avoid mandatory arbitration due to NAF's practices and sued Forthright.⁷
17 According to this former employee's complaint, NAF routinely:

18 (a) directed arbitrators to change decisions if they were adverse to
19 certain favored clients or potential clients (known within NAF as "Famous
20 Parties");

21 (b) ensured that arbitrators who ruled against Famous Parties were
22 not hired again;

23 (c) drafted claim forms for Famous Parties;

24 (d) drafted fictitious affidavits and/or proofs of service to
25 consumers;

26
27 ⁷ *Richert v. Nat'l Arbitration Forum, LLC et al.*, 0:09-cv-00763-ADM-JJK (Minn.
28 Dist. Ct. filed April 2, 2009).

1 (e) failed to forward responses filed by consumers to arbitrators;
2 and

3 (f) decided and issued its own rulings on procedural matters
4 against consumers in lieu of an arbitrator's rulings.

5 54. The former employee also reported that NAF's arbitrators were aware
6 of these practices. In fact, the former employee added that social gatherings were
7 often held in which arbitrators attempted to curry favor with NAF management in
8 order to receive more assignments. These assignments paid as much as \$325/hour.
9 Incredibly, some arbitrators even called NAF's lawyers to ask them how they
10 should rule on a particular case.

11 55. Similarly, BusinessWeek recently revealed a September 2007 NAF
12 marketing PowerPoint presentation aimed at creditors, labeled as "confidential,"
13 that not only promised a "marked increase" in collection recovery rates, but also
14 "boasts[ed] that [a] creditor may request procedural maneuvers that can tilt
15 arbitration in their favor. 'Stays and dismissals of action requests available without
16 fee when request by Claimant -- allows claimant to control process and timeline.'"⁸
17 According to an anonymous NAF arbitrator, these tactics allowed creditors to file
18 actions even if they are not prepared, in that "[I]f there is no response [from the
19 debtor], you're golden. If you get a problematic [debtor], then you can request a
20 stay or dismissal."⁹ Thus, in countless cases, a creditor received a default award,
21 just because the debtor failed to respond to the notice of arbitration that was
22 allegedly sent to him/her, and despite the creditor's failure to produce any evidence
23 verifying the amount owed, or that the alleged debt was owed at all.

24
25 _____
26 ⁸ Robert Berner & Brian Grow, *Banks v. Consumers (Guess Who Wins)*,
BusinessWeek, June 5, 2008.

27
28 ⁹ *Id.*

1 56. Accordingly, NAF entered arbitration awards against consumers no
2 matter how baseless the creditor's claim, including in cases where:

3 (a) the consumer was obviously not the same consumer who had
4 incurred the debt but someone with a similar name;

5 (b) the consumer was a victim of identity theft;

6 (c) the consumer never received a notice of arbitration;

7 (d) Mann Bracken failed to prove the existence of an arbitration
8 agreement between the creditor and consumer;

9 (e) Mann Bracken failed to document that it was lawfully
10 authorized to collect the debt, or that there was an existing debt at all;

11 (f) the alleged debt is past the statute of limitations;

12 (g) the consumer sought to submit evidence or otherwise defend
13 him/herself in the proceedings but was denied an opportunity to do so.

14 57. In addition to awarding debt collectors the amount of the debt they
15 sought, NAF consistently awarded additional sums to cover "expenses" and
16 "attorneys fees." These expenses included fees charged by NAF itself for its part
17 in the arbitration process. Specifically, NAF charged an "Administrative Fee" for
18 its services, ranging from about \$100 to over \$1,000, and collected the first \$50 of
19 that fee at the time consumers filed their initial response to the Notice of
20 Arbitration. Any portion of the fee that was not paid by the consumer up-front was
21 later made part of NAF's "arbitration award."

22 58. As reported, NAF did not independently verify that any of the
23 "expenses" (other than its own fees) were actually incurred by Mann Bracken or
24 other debt collectors for their so-called debt collection services, nor did it even
25 require Mann Bracken to account for its time spent on a matter before awarding it
26 attorneys' fees.

27 59. Defendants sought to enforce these sham arbitration awards, which
28 are virtually immune from judicial review, and included inflated amounts

1 exceeding the alleged debts owed, including illegitimate fees sought by Mann
2 Bracken and NAF.

3 **Accretive Aided and Abetted the Deception Perpetrated on Consumers and**
4 **the Courts**

5 60. Accretive aided and abetted the unfair and unlawful practices alleged,
6 by, among other things:

7 (a) forming the Agora Funds in order to obscure the financial
8 relationship amongst the Defendants;

9 (b) engaging in transactions to obscure its ownership and control
10 relationship with the other Defendants; and

11 (c) advising creditors how to utilize NAF as a debt collection tool.

12 **CLASS ALLEGATIONS**

13 61. Plaintiffs brings this class action pursuant to Federal Rule of Civil
14 Procedure 23, on behalf of themselves and others similarly situated. The "Class" is
15 defined as follows:

16 All persons in the United States who had an arbitration
17 award entered against them by NAF and in favor of
18 Axiant, Mann Bracken or any of their predecessors
19 and/or clients, between June 1, 2006 and the present (the
20 "Class Period").

21 62. The following persons shall be excluded from the Class: (a)
22 Defendants and their owners, subsidiaries and affiliates; (b) all persons who make
23 a timely election to be excluded from the proposed Class; (c) governmental
24 entities; and (d) the judge(s) to whom this case is assigned and any immediate
25 family members thereof.

26 63. Plaintiffs reserve the right to modify or amend the Class definition(s)
27 before the Court determines whether certification is appropriate.

1 64. The Class is so numerous that joinder is impracticable. NAF's own
2 publicly available records indicate that it has adjudicated hundreds of thousands of
3 arbitrations during the Class Period.

4 65. This action involves common questions of law and fact, including the
5 following:

- 6 a) Whether Defendants violated the California Consumer Legal
7 Remedies Act, California Civil Code § 1760, *et seq.*
- 8 b) Whether Defendants violated California Business &
9 Professions Code § 17200, *et seq.* and § 17500, *et seq.*;
- 10 c) Whether Defendants violated the Fair Debt Collection Practices
11 Act, 15 USC § 1692, *et seq.*;
- 12 d) Whether Defendants violated the Rosenthal Fair Debt
13 Collection Practices Act, California Civil Code § 1788, *et seq.*;
- 14 e) Whether Defendants' representations about legitimate
15 arbitration services and awards were likely to deceive Plaintiffs
16 and the Class;
- 17 f) Whether Defendants knew, or should have known, that their
18 representations were false and/or misleading;
- 19 g) Whether consumers would have agreed to arbitrate consumer
20 debt disputes before NAF had they known about Defendants'
21 financial relationship with one another;
- 22 h) Whether NAF breached its contracts with consumers;
- 23 i) Whether Defendants were unjustly enriched as a result of
24 Defendants' unlawful and unfair practices;
- 25 j) Whether Class members were injured as a result of Defendants'
26 conduct; and
- 27 k) Whether Plaintiffs and the Class are entitled to relief, and the
28 amount and nature of such relief.

1 72. NAF's arbitration services are "services" within the meaning of
2 California Civil Code Section 1761(b).

3 73. Defendants violated the CLRA as follows:

- 4 a) In violation of Section 1770(a)(3), Defendants misrepresented
5 their affiliation, connection, or association with one another;
6 b) In violation of Section 1770(a)(5), Defendants misrepresented
7 that NAF arbitrations have characteristics and benefits that they
8 do not have;
9 c) In violation of Section 1770(a)(9), Defendants advertised NAF
10 arbitration services with an intent not to sell them as advertised.
11 Defendants' advertisements were misleading to or likely to
12 deceive the reasonable consumer; and
13 d) In violation of Section 1770(a)(14), Defendants represented that
14 NAF sponsored arbitrations confer rights or remedies which
15 they do not have or involve, or which are prohibited by law.

16 74. Defendants concealed material facts regarding NAF arbitrations from
17 Plaintiffs and the Class, including that NAF is conflicted by its ownership structure
18 and unable to fairly and impartially decide arbitrations. This type of information is
19 relied upon by consumers in making purchase decisions, and is fundamental to the
20 decision to enter into, agree to be bound by, or attempt to appeal an arbitration.
21 Had Defendants disclosed this material information regarding NAF arbitrations to
22 Plaintiffs and the other class members, they would not have agreed to arbitration
23 before NAF. These omissions of material fact violated California Civil Code
24 Section 1770(a) sub sections (3), (5), (9), (14), and (19).

25 75. As a result of Defendants' conduct, Plaintiffs and the Class are
26 entitled to actual and statutory damages, costs of litigation, attorneys' fees and
27 such other relief authorized under the CLRA.
28

SECOND CAUSE OF ACTION
(Breach of Contract Against NAF)

76. Plaintiffs incorporate the above allegations as if set forth herein.

77. Plaintiffs and the Class entered into contracts with NAF, the materials terms of which promise legitimate, bona fide arbitration services.

78. Plaintiffs and the Class gave consideration that was fair and reasonable, and performed all conditions, covenants and promises required under their contracts.

79. NAF breached its contractual obligation to provide arbitration services to consumers. Rather than engage in any legitimate decision making process, NAF used its status as an ostensible arbitrator to facilitate Mann Bracken's collection efforts by rubber-stamping improper awards against consumers.

80. As a result, Plaintiffs and the Class were subjected to illegitimate arbitration awards, fees, and costs, in excess of the alleged debts owed and without due process, and suffered damages in an amount to be proven at trial.

81. NAF directly benefited from, and was unjustly enriched by, these contractual breaches.

THIRD CAUSE OF ACTION
(Violation of the Fair Debt Collection Practices Act)

82. Plaintiffs incorporate the above allegations as if set forth herein.

83. Defendants are "debt collectors" as defined in 15 U.S.C. § 1692a(6), and in doing the acts alleged, were attempting to collect alleged consumer debts.

84. Defendants violated, at minimum, 15 U.S.C. § 1692(e) and (f), by making false or misleading representations in their unfair attempts to collect debts from Plaintiffs and the Class, by among other things: representing that NAF was a independent forum when it was not; representing that the awards issued by NAF were not subject to or the result of any conflict of interest, when they were; and

1 representing that the additional fees and costs awarded against consumers were
2 lawful when they were not.

3 85. As a result of Defendants' violations of the FDCPA, Plaintiffs and the
4 Class were harmed, and are entitled to injunctive relief, and to recover actual and
5 statutory damages and attorneys' fees and costs pursuant to 15 U.S.C. § 1692k.

6 **FOURTH CAUSE OF ACTION**
7 **(Violation of the Rosenthal Fair Debt Collection Practices Act)**

8 86. Plaintiffs incorporate the above allegations as if set forth herein.

9 87. Defendants are "debt collectors" within the meaning of California
10 Civil Code § 1788.2(c).

11 88. Plaintiffs and the Class are "debtors" within the meaning of California
12 Civil Code § 1788.2(h), and in doing the acts alleged, were attempting to collect
13 alleged consumer debts.

14 89. Defendants were engaged in the attempted collection of consumer
15 debts, and are legally bound to follow the prescriptions of the Rosenthal Fair Debt
16 Collection Practices Act ("RFDCPA"), California Civil Code § 1788, *et seq.*

17 90. Defendants violated the RFDCPA, California Civil Code § 1788.17,
18 through their violations of 15 U.S.C. §§ 1692 (e) and (f) of the FDCPA, by making
19 false or misleading representations in their unfair attempts to collect debts from
20 Plaintiffs and the Class.

21 91. Defendants' violations of the RFDCPA were intentional and/or
22 malicious.

23 92. As a result of Defendants' violations of the RFDCPA, Plaintiffs and
24 the Class were harmed and are entitled to damages under California Civil Code §
25 1788.30.

26 **FIFTH CAUSE OF ACTION**
27 **(Violation of Bus. & Prof. Code Section 17500 et seq.)**

28 93. Plaintiffs incorporate the above allegations as if set forth herein.

1 (d) California Business and Professions Code Section 17500 *et seq.*
2 (False Advertising Law); and

3 (e) California Code of Civil Procedure, Section 1280 *et seq.*
4 (California Arbitration Act).

5 101. Defendants' practices were unfair because any utility for Defendants'
6 conduct is outweighed by the gravity of the consequences to Plaintiffs and the
7 Class, and/or Defendants' conduct is immoral, unethical, oppressive, unscrupulous
8 or substantially injurious to Plaintiffs and the Class.

9 102. Defendants' practices were fraudulent because they were likely to and
10 did deceive Plaintiffs and the Class, and Defendants engaged in such practices
11 knowingly.

12 103. Defendants' unfair and fraudulent practices include, but are not
13 limited to, the following:

14 (a) promoting, marketing, and selling purportedly legitimate
15 arbitration services, with no intent to provide them as advertised;

16 (b) charging and collecting improper and illegitimate fees and costs
17 for arbitration services that were not rendered; and

18 (c) deceiving courts to confirm bogus arbitration awards as
19 "judgments" falsely claiming they were issued by independent arbitrators.

20 104. As a result of Defendants' acts of unfair competition, Plaintiffs and
21 the Class lost money and suffered injury in fact, and thus are entitled to restitution,
22 injunctive relief and such other relief authorized under Section 17203.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
25 situated, pray for judgment, as follows:

26 A. An order certifying this case as a class action and appointing Plaintiffs
27 and his counsel to represent the Class;

1 B. An order awarding Plaintiffs and the Class actual, consequential, and
2 statutory damages to be determined at trial;

3 C. An order awarding exemplary damages in an amount to deter and
4 punish;

5 D. An order awarding restitution and/or disgorgement and other equitable
6 relief as the Court deems proper;

7 E. An injunction prohibiting Defendants from continuing to engage in
8 unfair and unlawful business practices and false advertising, including prohibiting
9 NAF from arbitrating disputes involving Mann Bracken or Axiant;

10 F. Pre- and post-judgment interest;

11 G. Attorneys' fees and costs of suit; and

12 H. Such other relief as the Court may deem just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs demand a trial by jury on all matters for which a jury trial is
15 guaranteed.

16 DATED: September 1, 2009

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